

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

STEPHEN HARRISON COCKBURN, :
: CIVIL ACTION No. 10-1407-JS
v. :
: NATIONAL BOARD OF MEDICAL
EXAMINERS. :
:

DECLARATION OF CAROLINE MEW

EXHIBITS 6-11

EXHIBIT 6

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

STEPHEN HARRISON COCKBURN)
Plaintiff,)
v.) Civil Action No. 10-1407
NATIONAL BOARD OF)
MEDICAL EXAMINERS)
et al.)
Defendants)

**PLAINTIFF'S ANSWERS TO DEFENDANT'S FIRST SET OF
INTERROGATORIES**

1. Identify all Impairments that you claim to suffer from which you believe entitle to testing Accommodations on the USMLE Step 1 examination.

Answer: Reading Disorder, Written Language Disorder, Attention-Deficit/Hyperactivity Disorder – Predominantly Inattentive Type

2. For each Impairment identified in response to Interrogatory number 1, state when you were first diagnosed as having that Impairment by a health care professional, and identify that professional.

Answer:

Reading Disorder: In June 2005, Plaintiff was diagnosed with a Reading Disorder by Dr. Dave Filipowski, licensed psychologist; in October 2009, Plaintiff was diagnosed with a Reading Disorder by Dr. Vincent Culotta, licensed psychologist and board-certified neuropsychologist.

Written Language Disorder: In June 2005, Plaintiff was diagnosed as Learning Disabled in the area of Written Language by Dr. Dave Filipowski, licensed psychologist.

Attention-Deficit/Hyperactivity Disorder: In October 2009, Plaintiff was diagnosed with Attention-Deficit/Hyperactivity Disorder-Predominantly Inattentive Type by Dr. Vincent Culotta, licensed psychologist and board-certified neuropsychologist.

3. For each Impairment identified in response to Interrogatory number 1, state all functional limitations that you experience, describe the severity of those limitations, and identify the major life activity or activities that you claim are affected by those limitations.

Answer: Objection. The question is vague, overly broad and unduly burdensome. Without waiving these objections, the Impairments identified in response to Interrogatory number 1 are described as follows:

Reading Disorder:

Functional Limitations: As defined by the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision: Reading achievement substantially below age-expectations, intelligence measures and educational history; reading achievement interferes with academic achievement and activities of daily living requiring reading skills; slow oral and silent reading, with errors in comprehension; borderline reading comprehension under standard time, low-average reading comprehension given extended time.

Severity: Severe

Major Life Activity Affected: Reading, Learning.

Written Language Disorder:

Functional Limitations: Writing skills substantially below age-expectations, intelligence measures and educational history; writing skills sometimes interfere with academic achievements and activities of daily living requiring writing.

Severity: Moderate to Severe

Major Life Activity Affected: Writing, Learning

Attention-Deficit/Hyperactivity Disorder:

Functional Limitations: As defined by the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision: Difficulty giving close attention to details; difficulty sustaining attention in tasks; Difficulty finishing work or duties, not attributable to oppositional behavior or failure to understand instructions; difficulty organizing tasks and activities; difficulty engaging in tasks requiring sustained mental effort; easily distracted by external stimuli; forgetful in daily activities; difficulty maintaining conversational turn-taking; difficulty completing tasks within time limits; difficulty with multiple-step directions; .

Severity: Severe

Major Life Activity Affected: Reading, Writing, Learning

4. For each Impairment identified in response to Interrogatory number 1, state whether you have ever taken any medications to address the symptoms of the Impairment, the name and dosage of each such medication, whether you are currently taking any medications, and, if so, the name and dosage of the medications you are currently taking.

Answer: Plaintiff has not in the past and is not currently taking any medications for any of the Impairments identified in response to Interrogatory number 1.

5. Identify all health care or other professionals (e.g., medical doctors, psychologists, neuropsychologists, counselors, etc.) whom you have consulted regarding any Impairment identified in response to Interrogatory number 1, above, and, for each such professional state when you first consulted that professional and the date range within which you were treated or evaluated by that professional.

Answer: Objection. The question is vague, overly broad and unduly burdensome. Without waiving those objections, Plaintiff consulted academic skills counselor Janet Smith during his high school enrollment in the Ravenscroft School, from August 1995 through June 1999. Plaintiff has also consulted Dr. Dave Filipowski, licensed psychologist, in January 1998, April 1998, and June 2005. Plaintiff has also consulted Dr. Vincent Culotta, licensed psychologist and board-certified neuropsychologist, in September 2009 and October 2009.

6. State the date of onset for each of your claimed Impairments, and state whether and when each such Impairment has improved or gotten worse since that date.

Answer: Objection. The question is vague, overly broad and unduly burdensome. Without waiving those objections, the onset of each Impairment was birth. The Impairments have not improved or gotten worse since birth, but have become more pronounced as reading and writing demands increased during Plaintiff's education and major life activities.

7. Identify and describe any mitigating measures, other than medications, that you use or have used to address the functional limitations that you experience or have experienced as a result of your Impairments.

Answer: Objection. The question is irrelevant, vague, overly broad and unduly burdensome. Without waiving those objections, Plaintiff has in the past used the following mitigating measures: extra time to read and process reading assignments; flash cards; PowerPoint and One Note software; scratch paper for writing out thought processes; separate room and reduced distractions; and professional and peer tutoring.

8. Identify all employers you have had during the past five years, and provide a description of your work duties for each employer.

Answer: Objection. The question is irrelevant. Without waiving this objection, Plaintiff's employers for the past five years have been University of North Carolina Hospital, in Chapel Hill, N.C.; AAIPharma, Inc., in Wilmington, N.C.; and D&J Automotive, in Lewisburg, N.C. Plaintiff's duties for University of North Carolina Hospital consisted of pharmaceutical assistant duties, filling carts with prescribed pharmaceuticals for individual patients and delivering those carts to the floor where the patient was receiving care; Plaintiff's duties for AAIPharma consisted of monitoring test subjects during pharmaceutical trials; and Plaintiff's duties for D&J Automotive consisted of selling cars.

9. Identify all Accommodations that you requested from any employer identified in response to Interrogatory number 8 and, for each such employer, state when and from whom you requested such Accommodations, whether any Accommodations

were granted, and, if so, what those Accommodations were and the reason you requested such Accommodations.

Answer: Objection. The question is irrelevant. Without waiving this objection, Plaintiff did not request Accommodations from any employer identified in response to Interrogatory number 8 because Plaintiff's duties did not require reading and processing written material in time-limited circumstances.

10. Identify all educational institutions you have attended from 1st grade to the current date.

Answer: Objection. The question is overly broad and unduly burdensome. Without waiving this objection, Plaintiff attended Wake County Public School System, the Ravenscroft School, North Carolina Central University, University of North Carolina at Chapel Hill, and Howard University College of Medicine.

11. Identify all Accommodations that were requested by or for you from any of the educational institutions identified in response to Interrogatory number 10 and, for each such institution, state when such Accommodations were requested, whether any such Accommodations were granted and whether any Accommodations were denied, what those Accommodations were, and the reason you requested such Accommodations.

Answer: Objection. The question is vague, overly broad and unduly burdensome. Without waiving those objections, Plaintiff received the Accommodation of extended time on tests and assignments starting in 1995, and requested in 1997 and received the Accommodation of extended time at the Ravenscroft School; requested in 2000 and received Accommodations of extended time and a reduced-distraction testing site from professors at North Carolina Central University; requested in 2006 and received the

Accommodation of extended time from the University of North Carolina at Chapel Hill; and requested in 2009 and received the Accommodation of extended time (double-time) on tests and examinations from Howard University College of Medicine.

12. Identify all other individuals or entities from whom you have requested Accommodations and state for each such individual and entity whether any Accommodations were provided, when they were provided, what Accommodations were provided, whether any Accommodations were requested but denied, and what those Accommodations were.

Answer: Objection. The question is vague, duplicative, overly broad and unduly burdensome, and irrelevant. Without waiving those objections, Plaintiff requested and received Accommodations as detailed in response to Interrogatory number 11, above, and in response Interrogatory number 13, below. Plaintiff has not requested or received Accommodations from any individual or entity not detailed in response to Interrogatories number 11 and 13.

13. Identify all standardized tests that you have taken from high school to date and, for each such test, state when you tested (providing all test dates if you took a test multiple times), whether you requested any testing Accommodations, whether the request was granted or denied, and the testing Accommodations that were granted or denied.

Answer: Objection. The question is overly broad and unduly burdensome. Without waiving this objection, Plaintiff took the PSAT test in 1997, without requesting or receiving Accommodations. Plaintiff took the ACT test in February 1998 without requesting or receiving Accommodations. Plaintiff took the SAT test three times: in March 1998 without requesting or receiving Accommodations; in November 1998,

requesting and receiving the Accommodations of extended time and seating in a separate room; and again in March 1999, requesting and receiving the Accommodations of extended time and reduced distractions. Plaintiff took the MCAT test four times: in April 2003, Plaintiff requested the Accommodations of extended time (double-time) and seating in a separate room, which request was denied initially, denied on reconsideration and denied on appeal; in August 2003, Plaintiff took the test without requesting or receiving Accommodations; in August 2004, Plaintiff again took the test without requesting or receiving Accommodations; and in April 2006, Plaintiff took the test after requesting the Accommodations of extended time (double-time) and seating in a separate room, and receiving the Accommodations of extended time (one and one-half) and seating in a separate room (Plaintiff appealed, seeking double-time, and was again granted one and one-half extended time on appeal)

14. Identify all volunteer organizations you have been associated with and for each such organization, describe your involvement, including but not limited to, the amount of time you volunteered and approximate dates of service.

Answer: Objection. The question is irrelevant, vague, overly broad and unduly burdensome. Without waiving these objections, Plaintiff has volunteered with Habitat for Humanity to assist in construction of low-income housing. Plaintiff cannot recall the time volunteered or dates of service. Plaintiff has also volunteered with multiple civic groups to participate in community cleanup activities. Plaintiff cannot recall the name, time volunteered or dates of service for these organizations.

15. Identify all extracurricular activities you participated in during high school or postsecondary school and for each such activity describe your involvement, including

but not limited to, the amount of time you participated and approximate dates of participation.

Answer: Objection. The question is irrelevant, vague, overly broad and unduly burdensome. Without waiving these objections, Plaintiff engaged in the following extracurricular activities:

High School: Played junior varsity and varsity football; participated in junior varsity and varsity track team; played piano in school band; played drums in school band.

College: Took non-graded piano classes; took non-graded Japanese classes at Duke University; participated in martial arts class; participated in biology honors society.

16. Identify all experts you have consulted in connection with this case and all experts who may be called to testify at trial.

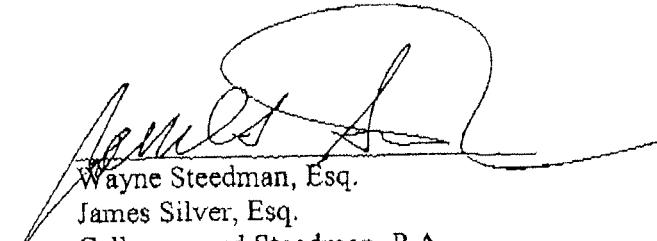
Answer: I have consulted Dr. Vincent Culotta, licensed psychologist and board-certified neuropsychologist in connection with this case, and he may be called to testify at trial.

17. Identify any other lawsuits that you have filed or threatened to file relating to any request you have made for Accommodations.

Answer: Objection. The question is irrelevant, vague, overly broad and unduly burdensome. Without waiving these objections, Plaintiff has not filed or threatened to file any other lawsuit relating to any request for Accommodations.

18. Identify all persons who prepared or assisted in the preparation of responses to these interrogatories, as well as the interrogatories on which they assisted.

Answer: Plaintiff and his counsel prepared the responses to these interrogatories.



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Counsel for Plaintiff

Dated: October 26, 2010

EXHIBIT 7

COCKBURN VS. NATIONAL BOARD OF MEDICAL EXAMINERS, ET AL.

DEPOSITION OF STEPHEN H. COCKBURN

DECEMBER 14, 2010

ART MILLER & ASSOCIATES
PHONE 410-494-8300
FAX 410-385-1883
www.artmiller.com

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA
STEPHEN HARRISON COCKBURN, *

Plaintiff, *

vs. * Civil Action

NATIONAL BOARD OF MEDICAL * No. 10-1407
EXAMINERS, et al., *

Defendants. *

* * * * *

Deposition of STEPHEN H. COCKBURN, a witness herein, called for examination by counsel for Defendants in the above-entitled matter, pursuant to notice, the witness being duly sworn by Robert M. Jakupciak, a Notary Public in and for the State of Maryland, taken at the offices of Callegary & Steedman, P.A., 201 N. Charles Street, Baltimore, Maryland, 21201, at 9:00 a.m., on December 14, 2010, and the proceedings being taken down by Stenotype by Robert M. Jakupciak, RPR.

C O N T E N T S

2	THE WITNESS: STEPHEN H. COCKBURN
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1 APPEARANCES:

2 On behalf of the Plaintiff:

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4 JAMES SILVER, ESQUIRE
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8 (410) 576-7606

9

10 On behalf of the Defendants:

11 ROBERT A. BURGOYNE, ESQUIRE
12 TING CHEN, ESQUIRE
13 Fulbright & Jaworski, L.L.P.
14 801 Pennsylvania Avenue, N.W.
15 Washington, D.C. 20004-2623
16 (202) 662-4729

17

18

19

20

21

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PROCEEDINGS

Whereupon,

3 STEPHEN H. COCKBURN,
 4 called for examination by counsel for Defendants and
 5 having been duly sworn by the Notary Public, was
 6 examined and testified as follows:

EXAMINATION BY COUNSEL FOR DEFENDANTS
BY MR. BURGOYNE:

9 Q Good morning, Mr. Cockburn. I introduced
 10 myself earlier. I'm Bob Burgoyné and I represent
 11 the National Board of Medical Examiners. As you
 12 understand, we are here for your deposition today.
 13 You gave your name a moment ago for the court
 14 reporter. Stephen Harrison Cockburn is your full
 15 name?

16 A Yes, sir.

17 Q Where do you live now?

18 A Right now I live in Silver Spring,
 19 Maryland.

20 Q Have you been deposed before?

21 A No, sir.

1 A That would be -- to the best of my
 2 recollection, that would be after second year of
 3 medical school, which would be 2009; 2009, 2010.

4 Q So were you enrolled at the beginning part
 5 of this year?

6 A No, sir. No, sir. I finished two years
 7 of medical school. I started in -- I want to make
 8 sure I have got the numbers right -- 2007, and after
 9 I completed two years, since I wasn't -- I hadn't
 10 taken the USMLE yet.

11 Q So you started the fall of 2007?

12 A Uh-huh.

13 Q And 2008, and you went 2008 to 2009, and
 14 now I take it in order to go to the third year you
 15 need to pass step 1?

16 A Exactly. Yes.

17 Q Is that a requirement of Howard?

18 A Yes, sir.

19 Q And Howard Medical School is where you are
 20 attending?

21 A Yes, sir.

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Page 8

1 Q Has your attorney explained the process to
 2 you?

3 A Yes, sir.

4 Q And you understand, I hope, that you are
 5 in control; any time you want to take a break, just
 6 let me know, we can take a break. If I ask you any
 7 questions at any point and you don't understand
 8 them, will you make a point of stopping me and
 9 asking me to clarify them?

10 A Yes.

11 Q And probably one of the most important;
 12 make sure to answer with words, not head nods. It's
 13 tough to remember to do that sometimes, but we want
 14 to get a clear record.

15 Q Are you on any medications today that
 16 would affect your testimony?

17 A No, sir.

18 Q Okay. What is your current academic
 19 status?

20 A As of right now, I am not in school.

21 Q When were you last attending classes?

1 Q Are you currently employed either
 2 full-time or part-time?

3 A No, sir.

4 Q And what are you doing to occupy your
 5 time?

6 A As of right now, I wake up, study for a
 7 couple hours. After that, spend most of the day
 8 working out. And then I have a side project I'm
 9 doing.

10 Q Is it related in any way to going to
 11 medical school?

12 A No, sir.

13 Q Have you ever been involved in any
 14 litigation other than this lawsuit?

15 A No. Not to my knowledge.

16 Q Okay. All right. Let me hand you a
 17 document, and one of the things I'm going to do
 18 today is show you a few documents and ask you some
 19 questions about them. And these are --

20 MR. BURGOYNE: I'll have the court
 21 reporter mark this as Cockburn 1.

(Pages 9 to 12)

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1 (Cockburn Exhibit Number 1
2 was marked for identification.)

3 BY MR. BURGOYNE:

4 Q When you are done with them, just turn
5 them face over and he'll have them all. This
6 document is captioned Plaintiff's Responses to
7 Defendant's First Set of Requests for Admissions.
8 Do you recognize this document?

9 A Yes.

10 Q Do you understand this is a document in
11 which we asked you to admit or deny certain facts,
12 and that was done with the assistance of your
13 counsel?

14 A Yes.

15 Q Okay. I just want to ask you about a
16 couple of them here. If you will turn to the page
17 that has I guess question 13? And the question is:
18 "Plaintiff did not receive any accommodations from
19 any testing organization prior to the 10th grade."
20 And that was admitted. Is that an accurate
21 statement? You didn't have any testing

1 never received accommodations at any job or in any
2 employment context; is that correct?

3 A That is correct.

4 Q And then the last one on the next page,
5 the answer is that you do not believe that your
6 ability to practice medicine will be affected by any
7 of your disabilities?

8 A That is correct.

9 Q And is that still the case today? Is it
10 still your belief that your ability to practice
11 medicine won't be affected in any way by either the
12 learning disability or the attention deficit that's
13 been claimed in this case?

14 A That is correct.

15 Q For example, do you believe you have good
16 interpersonal skills?

17 A Yes.

18 Q You get along well with other people?

19 A Yes.

20 Q Are you able to pay attention to details
21 and are you careful?

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Page 12

1 accommodations before the 10th grade on a
2 standardized test?

3 A That would be accurate, on a standardized
4 test, yes.

5 Q Okay. And then 15 acknowledges that you
6 were not diagnosed with a reading disorder prior to
7 the year 2005; is that correct? Is that the first
8 time you were diagnosed with a reading disorder;
9 2005?

10 A Yes. I was not formally diagnosed, yes.

11 Q And the next one indicates that you were
12 not formally diagnosed with any attention deficit or
13 hyperactivity disorder prior to 2009; is that
14 correct?

15 A That is correct.

16 Q And then 17 confirms that you did not
17 formally apply for any accommodations at North
18 Carolina Central University?

19 A That's right. I didn't formally apply for
20 them, but I was receiving accommodations.

21 Q Okay. And then 18 confirms that you have

1 A Yes. I'm much more careful, actually.

2 Q In your work environments do you find
3 yourself making careless mistakes?

4 MR. STEEDMAN: Objection. He already
5 testified he is not working, but go ahead and
6 answer.

7 BY MR. BURGOYNE:

8 Q In your past jobs, for example, when you
9 were a lab technician, did you find yourself making
10 careless mistakes?

11 A When I first started I made mistakes, but
12 after I got a hang of the job, I was fine, and I was
13 very careful.

14 Q What would you attribute those early
15 mistakes to? Just learning the job?

16 A Just learning the job basically.

17 Q And at medical school do you find yourself
18 making careless mistakes in your second year?

19 A No, sir.

20 Q When you were working say in your lab
21 technician job, are you able to stay focused on the

(Pages 13 to 16)

Page 13

Page 15

1 job and do what you are asked to do?

2 A I'm able to stay focused to a, for an
3 extended period of time, but there are times when I
4 do have to take a break, step back from what I'm
5 doing, get my thoughts together, and then get back
6 to work.

7 Q And when someone is talking to you
8 directly like I am now, do you focus on that, do you
9 pay attention to the person talking to you?

10 A I do.

11 Q Are you reliable?

12 A Very reliable.

13 Q Do you follow through when you are given
14 instructions?

15 MR. STEEDMAN: Objection to --
16 clarification of --

17 BY MR. BURGOYNE:

18 Q In the work environment if someone gives
19 you instructions for a job, do you follow through
20 and get the job done?

21 A Yes.

1 I definitely feel I can get through the training to
2 get through emergency medicine to get my degree.

3 Q Okay. How about just have you interacted
4 with patients at all in your second year of medical
5 school?

6 A I have.

7 Q And did you find that you were able to
8 stay focused in interacting with patients?

9 A Yes.

10 Q And did you ever find yourself getting
11 distracted when you were talking to patients or
12 losing your train of thought?

13 A I'm sorry. While I'm talking to patients?

14 Q Yeah.

15 A No, sir.

16 Q Okay. How about when it came -- have you
17 had occasion yet to prepare patient notes after
18 interviewing patients?

19 A No, sir.

20 Q When does that come in the medical school
21 training?

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1 Q And is the same true in medical school; if
2 you are given instructions, do you follow through
3 and complete the assignment?

4 A Yes.

5 Q Do you find yourself in medical school
6 avoiding work that takes a lot of mental effort over
7 an extended time?

8 A Not at all.

9 Q Have you ever been in an emergency room
10 setting?

11 A No, sir.

12 Q Do you think you can stay focused in an
13 emergency room context or an emergency context?

14 MR. STEEDMAN: Objection.

15 BY MR. BURGOYNE:

16 Q Medical context?

17 MR. STEEDMAN: Objection; relevance. Go
18 ahead.

19 A Emergency medicine definitely would not be
20 my first choice, since there is many different
21 fields I can choose from in medicine. But I

1 A Third year.

2 Q Third year?

3 A Yes, sir.

4 Q What area of medicine do you hope to go
5 into?

6 A As of now, I have no idea.

7 Q Have there been any areas in the past that
8 were of interest to you?

9 A When I was a child I wanted to be an
10 orthopedic surgeon. Surgery isn't for me, though.

11 Q How about since starting medical school,
12 any particular areas that have been of interest to
13 you?

14 A No, not yet, because the first two years
15 are basically scientific. You are in classrooms.
16 You don't really start clinical classes until the
17 third year. So I told myself I would keep an open
18 mind.

19 Q What's your experience been like in
20 medical school? Are you keeping up with the
21 academic requirements?

(Pages 25 to 28)

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1 parents didn't have you referred at any point for
2 psychological testing through the sixth grade?

3 A No, sir.

4 Q And the same is through the 9th grade; no
5 psychological testing was done?

6 A No psychological testing was done, even
7 though in ninth grade, once again, my teachers still
8 were saying I should get tested.

9 Q In elementary school you were in a public
10 school; correct?

11 A Yes.

12 Q And were you aware of people at the time
13 who were in classes, had special classes as part of
14 an IDEA Program or had a 504 Plan or anything like
15 that because of special needs or learning
16 disabilities, anything like that?

17 A No, sir. I was not aware.

18 Q And you say you went to Ravenscroft for
19 four years?

20 A Yes, sir.

21 Q What year did you graduate?

1 usually in the springtime, for black history month
2 we would put on some kind of demonstration for the
3 school.

4 Q Okay. And was that -- is Ravenscroft an
5 academically rigorous school?

6 A Very much so. It's a college preparatory
7 school.

8 Q What courses did you do best in in high
9 school? Do you recall what your best subjects were?

10 A My best subject was band, but aside
11 from -- yeah. Band.

12 Q How about academic subjects?

13 A The subjects that I did best in would be
14 history.

15 Q What was your worst subject?

16 A Math and English.

17 Q Did you take Spanish?

18 A Yes, sir.

19 Q How did you like that?

20 A At first I couldn't stand it because I
21 didn't understand it, I struggled with Spanish.

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1 A Graduated in '99.

2 Q And you graduated on time in the four
3 years?

4 A Yes, sir.

5 Q What activities did you do at Ravenscroft?

6 A I played sports, football in the fall,
7 track in the spring, and as well as I played piano.

8 Q Was that part of the band?

9 A Yes. It was part of the band.

10 Q Were you in any clubs?

11 A I was in one club, and it was called the
12 Prism Club.

13 MR. STEEDMAN: Prism?

14 THE WITNESS: Prism.

15 MR. BURGOYNE: Wow. Scared straight.

16 THE WITNESS: Right.

17 BY MR. BURGOYNE:

18 Q All right. Prism Club. What was the
19 nature of the Prism Club?

20 A It was basically a club that brought
21 African awareness to the school. Once a year,

1 Q All right. You graduated in '99. Then
2 you went on to NC Central?

3 A Yes.

4 Q And did you take any time off between high
5 school and college?

6 A No, sir.

7 Q And did you complete NC Central in four
8 years?

9 A Yes, sir.

10 Q And what year did you graduate from
11 Central?

12 A 2003.

13 Q What was your major?

14 A Biology.

15 Q Did you have a minor?

16 A Chemistry.

17 Q What activities did you participate in at
18 Central?

19 A For the most part, I was -- I was in the
20 Academic Club, TA'd for students that were
21 struggling in biology, chemistry. Aside from

(Pages 29 to 32)

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1 academics, those are -- those are the two activities
 2 I really focused on.

3 Q Were you in a fraternity?

4 A No, sir.

5 Q Did you participate in any IM sports,
 6 intramural sports?

7 A No, sir. I didn't have any time.

8 Q Did you have a job at all while you were
 9 in college?

10 A No, sir. I had a work study job, but I
 11 didn't have a, you know, 9 to 5 jobs.

12 Q Did you just get a reduction in tuition or
 13 something like that?

14 A No. I received a stipend. It was -- they
 15 moved me around the biology department, but for the
 16 most part, I was just studying. I really can't call
 17 it work. It was more study than work.

18 Q Okay. You mentioned being a TA, a
 19 teaching assistant?

20 A Yes.

21 Q Was that part of your work study or

1 A No, sir.

2 Q And were you a TA at any point other than
 3 the end of your freshman year?

4 A Not, not where I was getting -- not as a
 5 job, not where I was getting paid. A lot of times,
 6 since I was doing work study and my work study jobs
 7 were basically signing off in the computer room,
 8 things like that. Students would come to me and ask
 9 me questions.

10 Q Okay. So more informal assistance for
 11 other students?

12 A Right.

13 Q I believe you said you never formally
 14 requested accommodations, but that you had received
 15 some accommodations at NC Central?

16 A Yes, sir.

17 Q Was that primarily on your exams?

18 A That was only on my exams; my exams and
 19 quizzes.

20 Q Okay. Why didn't you ask for formal
 21 accommodations?

Page 30

Page 32

1 separate?

2 A That was separate. I did TA during the
 3 summer. It was my, the end of my freshman year, and
 4 I basically helped with the summer program -- a
 5 summer program, helping students with the classes
 6 they were taking. Biology, we had a class called
 7 science odyssey. And that was, of course, because
 8 my classes during the summertime, I had less classes
 9 to take. I was taking -- I believe my freshman year
 10 I was taking world history and that was it. So...
 11 I'm sorry. World history and chemistry.

12 Q Okay. So that was at the end of your
 13 freshman year. So you were being a TA for other
 14 freshman who were taking courses in the summer?

15 A Yes.

16 Q Or maybe some of them weren't freshman?
 17 Do you recall whether all of them were freshman?

18 A They could have very well have been
 19 juniors, seniors from other majors.

20 Q Any subjects other than biology and
 21 chemistry that you were a TA for?

1 A Senior year of high school, one of my --
 2 my history teacher, told me or basically said,
 3 advised me to try to not use my accommodations, not
 4 try to -- see if I can get through college without
 5 using my accommodations. So I took his advice for
 6 the first two weeks of my time at Central, and it
 7 didn't go well at all. It went terrible.

8 So I went back to my teachers, told them
 9 that in high school I received accommodations,
 10 showed them my paperwork, and I had very good
 11 relationships with all my professors, so they gave
 12 me my extended time on my tests and quizzes. So
 13 there was no real need to go to academic services
 14 and go through the red tape.

15 Q Okay. But you were okay doing class work?
 16 You were able to keep up in classes? They didn't
 17 give you a reader for classes, nobody was taking
 18 notes for you or recording lectures or anything like
 19 that?

20 A No.

21 Q Okay. Do you get nervous when it comes

(Pages 37 to 40)

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Page 39

1 be -- I was told it would be easier for me to study,
2 but it turned out it wasn't.

3 Q Okay. So that was a full-time job?

4 A That was a full-time job. The hours were
5 very irregular. It was from -- my hours were from
6 around 5:00 to 7:00 in the morning -- 5:00 in the
7 afternoon until 7:00 in the morning.

8 Q Tough hours.

9 A Yeah.

10 Q How long did you continue working at AAI?

11 A I had that job for, to my recollection,
12 about a year.

13 Q What were your job responsibilities there?

14 A So AAI was a pharmaceutical company and
15 they test drugs on healthy populations. And what
16 they were testing for was they are already FDA
17 approved drugs, but they were testing for how quick
18 the drugs would, a particular drug would absorb in
19 one's body, basically.

20 So my job description there was to watch
21 test subjects, get test subjects assembled for blood

1 their heart rate and blood pressure and not take a
2 long period of time. Sometimes I asked one of the
3 nurses to read out what is on the -- what their
4 monitor was saying in terms of blood pressure and
5 heart rate.

6 Q Right.

7 A That way I could just focus on what I'm
8 writing in front of me and --

9 Q All right. Did you get positive feedbacks
10 from your job at BBRI, positive job feedback?

11 A When I applied to AAI?

12 Q Well, just generally. Did you get good
13 job reviews? Do you think they liked the work you
14 did for them at BBRI?

15 A I believe they did.

16 Q You weren't terminated, nothing like that?

17 A No, sir. No, sir.

18 Q And same at AAI? Were you a good employee
19 there?

20 A I was.

21 Q And at neither of these jobs did you have

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Page 40

1 draws, document their blood pressure, heart rate,
2 and make sure nobody left the building, none of the
3 test subjects left the test area.

4 Q What kind of skills would you say were
5 required for that job?

6 A You had to stay awake, definitely.

7 Q That's a pretty low criteria. All right.

8 MR. STEEDMAN: That was good.

9 BY MR. BURGOYNE:

10 Q Beyond staying awake.

11 A Right. You had to be able to document
12 information, you had to be able to -- for the most
13 part, document information.

14 Q I assume as part of that you had to do
15 that accurately?

16 A Yes, sir.

17 Q How about did you have to have any sort of
18 organizational skills?

19 A Absolutely. I pretty much had my own
20 little way of getting patients in, getting them down
21 in a way that I can most efficiently write down

1 any sort of accommodations?

2 A In terms of?

3 Q Someone helping you do your job because of
4 a learning issue or anything like that? I mean
5 comparable to academic accommodations, but in the
6 job setting?

7 A No. No.

8 Q All right. After AAI, what happened next
9 in terms of either employment or going back to
10 school?

11 A So after AAI I had trouble finding a job.
12 I did the shoe salesman thing, sold cars.

13 Q Was the shoe salesman door-to-door? One
14 of those things?

15 A No, sir. It was at Dillards. And like I
16 said, sold cars.

17 Q How did you do in those jobs?

18 A I did pretty good.

19 Q You got along well with people?

20 A Yeah. Yeah.

21 Q Where did you sell cars? Was that in

(Pages 41 to 44)

Page 41

Page 43

1 North Carolina?

2 A No. It was in Lewisburg. That's like
3 maybe 20 minutes outside of Raleigh.4 Q So it's in North Carolina, but not in
5 Raleigh?

6 A Yeah. Yeah. I'm sorry.

7 Q That's what I thought. All right. And
8 then when did you enroll in the program you took at
9 UNC, your academic program at UNC?

10 A Are you referring to the biochemistry?

11 Q Yeah.

12 A That was -- I was still in, I was still
13 in -- in June of 2006.14 Q Were you still working at AAI at that
15 time?16 A No, sir. I was working at -- I had a job,
17 or I got a job at the UNC Chapel Hill Hospital as a
18 pharmacy technician.

19 Q How long did you have that job?

20 A I had that job for about two years. Two
21 years.

Page 42

Page 44

1 Q Do you recall roughly when that was? Was
2 that 2004 to 2006?

3 A No.

4 Q Or 2005 to 2007? Something like that?

5 A No, sir. It was -- right. It was 2005 to
6 2007, because I -- yes. It was 2007. Because I
7 started medical school that summer? That summer.8 Q So you were working while you were taking
9 that class at UNC?

10 A Yes, sir.

11 Q And working full-time?

12 A Yes, sir.

13 Q Why did you decide to take that class at
14 UNC?15 A On my transcript I had a D in
16 biochemistry, so I wanted to rectify that.17 Q As I recall, you had already taken the
18 MCAT for the last time in June of 2006; is that
19 correct?

20 A Yes. That would be correct.

21 Q So you weren't taking that class to

1 prepare for the, to help you prepare for the MCAT?

2 A No, sir.

3 Q What was your job at UNC, the hospital
4 there at Chapel Hill? Pharmacy tech?

5 A Yes, sir.

6 Q What responsibilities did that include?

7 A The job consisted of taking meds to the
8 floors. Aside from that, we filled oral syringes,
9 and data entry.10 Q Would you say that all of those
11 responsibilities, taking meds to the floors, filling
12 oral syringes and data entry, required that you
13 perform the work accurately?

14 A Absolutely.

15 Q And be careful?

16 A Absolutely.

17 Q Did you get good job reviews in that
18 position?19 A Yes. At my probationary period I had some
20 problems with data entry, getting used to the names
21 of the medications and the dosage, things like that.1 But I got a hang of it, worked hard, and I didn't
2 have any more problems after that.3 Q Probationary period, that was just at the
4 beginning of the job?

5 A Yes, sir.

6 Q Okay.

7 A I believe I -- to the best of my
8 recollection, probationary period is about three to
9 six months.10 Q Okay. Did you have any periods or any
11 instances where you were disciplined for any reason
12 in that job?

13 A No.

14 Q Were you admitted to any medical school
15 other than Howard?

16 A Yes. I also got into ECU.

17 Q And when did you enroll in Howard? Was
18 that fall 2007 did you say?19 A It was 2007, but it was more the summer of
20 2007.

21 Q Okay.

(Pages 61 to 64)

Page 61

Page 63

1 total would be about three hours.

2 Q What was the purpose of the second
3 meeting? Was that to review the results of your
4 assessments?

5 A Yes, sir. We talked about the results, as
6 well as he gave me recommendations to make my
7 studying go more efficiently.

8 Q Did you tell him how much extra time you
9 wanted to get on the Step 1 exam?

10 A No, sir.

11 Q What did you tell him about why you were
12 coming to see him?

13 A I told him that the USMLE had denied me
14 accommodations and my goal was for him to evaluate
15 me honestly and fairly; that way I could have not
16 just one psychologist, but two psychologists saying,
17 telling the USMLE I require accommodations for my
18 tests.

19 Q Did anyone go with you to see Dr. Culotta?

20 A No, sir.

21 Q Did you take any records with you when you

1 Q Did you give him any records from NC
2 Central?

3 A Yes. I gave him my AMCAS, my AMCAS
4 document.

5 Q Your application?

6 A Yes. That basically has all of my grades,
7 all my history on there.

8 Q Okay. Did he ask you for any other
9 records other than those educational records which
10 you retrieved for him?

11 A He also asked for Dr. Filipowski's
12 evaluation.

13 Q Did you give him a complete set of Dr.
14 Filipowski's reports?

15 A Yes, sir.

16 Q Did you give him a copy of the NBME's
17 guidelines for requesting accommodations?

18 A I'm not sure if I did. He might have
19 looked on the Internet I believe, because they have
20 it posted on the Internet.

21 Q You don't recall giving it to him?

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Page 64

1 went to meet with him?

2 A Not the first time, no, sir.

3 Q At some subsequent point you gathered some
4 of your educational records for him?

5 A I gathered all my educational records.
6 Dr. Filipowski didn't have my records from
7 kindergarten and 8th grade. He only had my
8 records -- I don't think he -- come to think of it,
9 I don't think he had any of my records. But Dr.
10 Culotta asked me specifically to bring records from
11 kindergarten to high school to him. And that's what
12 I did.

13 Q Where did you get those records? Were
14 those from your own files or your parents' files?

15 A No, sir. I actually called Archives at
16 Wake County Public Schools.

17 Q And did you give him a complete set of the
18 records that you received from Archives?

19 A Yes, sir. I gave him a complete -- yes,
20 sir. I gave him a complete set. Everything that
21 they gave me I gave him.

1 A I don't recall giving it to him.

2 Q Did he ask you any questions about your
3 studying for the Step 1 or any questions about the
4 exam?

5 A In terms of?

6 Q Anything. Or was that just not his end of
7 it?

8 A He didn't really -- he asked me how I was
9 preparing, how I prepared for it. Aside from that,
10 for the most part, he asked me about how school was,
11 how medical school was the first two years, if I
12 struggled, if I had any problems, that sort of
13 thing.

14 Q Are there any other documents that you can
15 think of that you gave to him as we sit here today,
16 other than educational records?

17 A No. No. I gave him basically everything
18 that I gave -- no. I gave him everything that I
19 gave NBME.

20 Q So you gave him a complete set of your
21 documentation that you used to support your request?

(Pages 69 to 72)

Page 69

Page 71

1 Q And as we sit here today, is it your
 2 belief that this document -- the information in this
 3 document is accurate and complete?

4 A Yes. Yes.

5 Q Okay. We have got a summary here in
 6 question two about the diagnoses you have received
 7 from Dr. Filipowski and Dr. Culotta.

8 A Uh-huh.

9 Q Do you see that? And there is a
 10 discussion of the three impairments that you have
 11 been diagnosed with at various points; a reading
 12 disorder, a written language disorder, and then an
 13 attention deficit disorder?

14 A Yes.

15 Q Let me make sure that I have this whole
 16 sequence right. In 1998 you went to see Dr.
 17 Filipowski and he didn't give you a diagnosis for
 18 either a learning disability or an attention
 19 disorder; is that correct?

20 A That is correct.

21 Q Okay. Then in 2005 Dr. Filipowski

1 That's right. '95-'96; that was my first year.

2 Q And I believe you said at Central the
 3 accommodation you got was extended time on tests and
 4 quizzes?

5 A At Central?

6 Q At Central.

7 A Yes.

8 Q And then turning over on the next page,
 9 there is a statement that you received the
 10 accommodation of extended time from the University
 11 of North Carolina at Chapel Hill?

12 A Yes.

13 Q Was that in that biology, chemistry class?

14 A Biochemistry.

15 Q Biochemistry?

16 A Yes, sir.

17 Q Was that, likewise, on examinations and
 18 quizzes?

19 A Yes, sir.

20 Q Then in 2009 it says that you received the
 21 accommodation of extended time, double time, on

Page 70

Page 72

1 diagnosed you with a reading disorder and a written
 2 language disorder, but no attention deficit
 3 disorder; is that correct?

4 A That is correct.

5 Q And then in 2009 Dr. Culotta identified
 6 you with a reading disorder and attention deficit
 7 disorder, but no written language disorder; is that
 8 correct?

9 A That is correct.

10 Q Okay. On page 6, Stephen, there was a
 11 question asking about the accommodations you have
 12 received at various points in your educational
 13 career. And looking at the answer, it says:
 14 "Plaintiff received the accommodation of extended
 15 time on tests and assignments starting in 1995." Is
 16 1995 -- what happened that year? Was that your
 17 first year at Ravenscroft?

18 A That was my first year. '95-'96 was my
 19 first year.

20 Q Okay.

21 A Let me make sure that's right. Yeah.

1 tests and examinations from Howard University
 2 College of Medicine?

3 A In 2009?

4 Q Is that accurate?

5 A No. That's not accurate. I received
 6 double time at Howard University from the time I
 7 started medical school, which was 2007.

8 Q Okay. In all events, while you have been
 9 at Howard, the accommodation you have received is
 10 extra time on tests and examinations?

11 A Yes.

12 Q Any other accommodations you received from
 13 Howard?

14 A Tests, quizzes and lab practicals.

15 Q Okay. Is lab practical a type of test or
 16 assessment?

17 A Yes, it is.

18 Q Okay. Anything else?

19 A No.

20 Q Are you still taking Japanese?

21 A No. No, sir. I don't have the time to

(Pages 73 to 76)

Page 73

Page 75

1 take it, unfortunately.

2 Q Are you still teaching a martial arts
3 class?

4 A No. I don't have the time. I tried to do
5 it the second year because I figured I would be
6 settled, but it didn't work out. I had to stop.

7 Q And on page 9 it says you participated in
8 a biology honors society in college?

9 A Yes, I did.

10 Q Do you recall when that was, what point in
11 your college career that was? Junior year?

12 A It was actually -- I started that in --
13 that was biology; right?

14 Q Yeah.

15 A Yeah. That would be towards the -- yeah,
16 my second semester freshman year. Yeah.

17 MR. BURGOYNE: Okay. Let me hand you
18 Defendant's 3.

19 (Defendant's Exhibit Number 3
20 was marked for identification.)

21

1 copies of e-mails, and I didn't see any e-mails from
2 you or to you in the documents that were produced to
3 us. Do you recall reviewing your e-mails to see if
4 you had any e-mail messages that would be
5 responsive?

6 I'll give you an example. One of the
7 things we asked for was any correspondence you had
8 with any third parties relating to your requests for
9 accommodations. For example, if you had sent an
10 e-mail to Dr. Culotta or if you had sent e-mails to
11 the National Board of Medical Examiners, those would
12 be the kinds of things we were looking for.

13 A Oh, I see. You sent me an e-mail and it
14 ended up in my in box.

15 Q I wouldn't have sent it to you. I was
16 asking you to produce to your lawyers, to print off
17 and produce to your lawyers copies of any e-mails
18 that you have that you sent to other people that
19 relate to any of the subjects in this lawsuit. Did
20 you look through your e-mails for those types of
21 e-mails?

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1 BY MR. BURGOYNE:

2 Q While you are looking at that, I will
3 identify it. Defendant's 3 is Plaintiff's Responses
4 to Defendant's First Set of Document Requests. Do
5 you recall receiving a set of document requests from
6 your lawyers asking you to produce documents to the
7 National Board of Medical Examiners?

8 A Yes.

9 Q And what did you do to locate documents
10 that would be responsive to that request?

11 A I gathered all the information, all the
12 documentation that I had and I sent it to them.

13 Q Do you have an e-mail account?

14 A I do.

15 Q And did you make any effort to review your
16 e-mail, old e-mails to see if there were any e-mails
17 in there that were responsive to any of our
18 requests?

19 A I -- anything that my lawyers sent me I
20 made sure I took a look at.

21 Q Usually in a document production I'll get

1 A Oh, okay. I didn't, because I don't have
2 any, anything like that. I guess I'm not really
3 following you. I don't have any --

4 Q You don't just have on your e-mail account
5 old e-mails?

6 A I mean I do have old e-mails, but I
7 haven't e-mailed Dr. Filipowski or Dr. Culotta, so I
8 wouldn't have that.

9 Q Okay. How about you communicated with the
10 NBME by e-mail, didn't you?

11 A I believe so.

12 Q Okay.

13 A I believe I did.

14 Q Do you have any of those e-mail messages?

15 A More than likely I do, yes.

16 Q Okay. And did you communicate with AAMC
17 when you were requesting MCAT accommodations, did
18 you communicate with them by e-mail?

19 A For the most part it was through mail,
20 because I -- I actually had to write a statement to
21 them like saying why I need, why I feel I should get

(Pages 89 to 92)

Page 89

Page 91

1 A Yeah. That's wrong. The only --

2 Q You are not giving me a lot of confidence
3 in this official transcript.

4 A I'm sorry. That's definitely wrong. The
5 only class I took at Duke was Japanese, because it
6 wasn't offered at Central. Right.

7 Q All right. There are a couple classes
8 here, science odyssey and biochemistry, which shows
9 WC, which I think is withdrew from class. Do you
10 recall why you withdrew from those classes?

11 A Okay. Science odyssey is a -- basically,
12 it's a core requirement. And it's very, very basic
13 chemistry, physics, biology. I didn't actually
14 withdraw from it, withdrew from it. I actually
15 challenged the course, because by that time I had
16 taken all kinds of sciences and I just challenged
17 it.

18 So that WC -- I don't know what they put.
19 But I challenged it, so I basically graded out of
20 the class. What was the other class you were asking
21 about?

1 confirmation for you that you had received
2 accommodations while at Central? Do you recall?

3 A Yes. Dr. Fuller -- there is a letter that
4 states that Dr. Fuller --

5 Q He confirmed you had gotten extra time?

6 A Yes.

7 Q All right. Could you read this e-mail
8 into the record, please, just the first paragraph?

9 A Okay. "I have received a request from
10 Stephen Cockburn, who was enrolled in Chem 3100 and
11 3120 - Organic I and II lecture courses that I
12 taught a few years ago, to provide a statement that
13 he was allowed extra time to complete tests during
14 these courses. He was allowed extra time for these
15 tests, although I did not request documentation that
16 he qualified for the extra time."

17 Q Do you recall communicating with Dr.
18 Myers?

19 A I recall communicating with him --

20 Q To make this request that he is talking
21 about here?

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Page 92

1 Q Biochemistry, it looks like fall of 2001.

2 A Biochemistry fall of 2001. I honestly
3 don't know why I withdrew from that class. I
4 honestly don't know.

5 Q Okay. Let's look at page 3 and just
6 confirm your overall GPA. It looks like you
7 graduated with a 3.456 cumulative GPA; is that
8 right?

9 A That's right.

10 Q Okay. And then if you'll go over past the
11 transcript, you'll see an e-mail. That's just the
12 explanation of the transcript. Yeah. That page.
13 Do you see it's from a John Myers to James Fuller?

14 A Uh-huh.

15 Q Who is John Myers?

16 A That would be my organic chemistry
17 teacher.

18 Q And who is Dr. Fuller?

19 A Dr. Fuller is in charge of academic
20 services.

21 Q Was Dr. Fuller the person who provided

1 A Yeah. I was in his class.

2 Q Here, though, he is reporting that a few
3 years after you graduated you contacted him to ask
4 for confirmation that he had given you extra time.
5 Do you recall doing that?

6 A Yeah. I did. I did.

7 Q Did you make a similar request to any
8 other professors at NC Central?

9 A I made similar requests to a lot of my
10 professors at Central. I basically walked with, had
11 a -- wrote out basically a generic letter that they
12 had no problems signing, because it was the truth,
13 and I gave it to Dr. Fuller, who then wrote a letter
14 to MCAT saying that I did receive accommodations
15 while I was at Central.

16 Q Okay. Were there any other classes like
17 this one where you were given extra testing time
18 without the teacher asking you for any
19 documentation?

20 A There were a few, there were a few
21 classes -- well, I had Dr. Filipowski's first

(Pages 109 to 112)

Page 109

1 indicates from January 1991 until the present you
 2 were working roughly eight hours per week as a
 3 martial arts instructor for the Kung Fu Arnis
 4 Academy; correct?

5 A Yes. Let me clarify this. I started
 6 learning martial arts in '91. I wasn't an
 7 instructor though. I did not become an instructor
 8 until --

9 Q 2004?

10 A Definitely not 2004. Yeah. Yeah. I'm
 11 sorry. Yeah. 2004.

12 Q I see here it says, "I have been an
 13 instructor for two years now."

14 A Yeah. Because I have my brown belt. I
 15 got my brown belt in 2004, yeah, before I went off
 16 to medical school.

17 Q Was that a paid position?

18 A No, sir, unfortunately.

19 Q You say in the end here, "Martial arts has
 20 always been important to me because it demands
 21 discipline and determination." What did you mean by

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1 that?

2 A I meant that being a marshal artist, you
 3 have to be able to go through that kind of training,
 4 you have to be disciplined and you have to be
 5 determined, and it just spills over into every
 6 aspect of your life.

7 Q Does it require focus?

8 A Yes, it does.

9 Q How many people were you teaching at that
 10 time?

11 A In the martial arts class?

12 Q Yeah. Would you have two or three people
 13 that you worked with? How did that work?

14 A No. Usually what we do is there is more
 15 than one person, because usually we had like maybe
 16 30 people, 25 people in the class. So, basically,
 17 we would split the class up amongst the instructors.
 18 So I would at any given time have anywhere from one
 19 person to five people to teach for the most part.

20 If it was the entire class that I was
 21 instructing, usually it would be some kind of -- I

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1 would tell everybody to get down and do push-ups or
 2 run, do suicides, run up and down the school or sit
 3 in a stance for a long period of time, things that,
 4 you know, and things that everybody -- that
 5 everybody uniformly -- and, of course, it wasn't
 6 just me. Other instructors would walk around and
 7 make sure everybody was doing what they were doing.

8 Q How long would it take in a given day?

9 How much time would you spend teaching?

10 A You usually had classes two hours on
 11 Tuesday, two hours on Thursday. Yeah. Two hours,
 12 two hours. That is, of course, if I had any school
 13 obligations, I wasn't going to be there for class.

14 Q Okay. Let's turn to AAMC11. This is
 15 where you get to write a personal statement. Do you
 16 recall writing this?

17 A Yes.

18 Q Why did you decide to do it in story
 19 format?

20 A Because -- I don't know. I just thought
 21 it would be -- most essays are boring and I just

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Page 112

1 figured it would be more enjoyable to whoever was
 2 cursorily reading a thousand essays.

3 Q Do you keep a diary or anything like that?

4 A No, sir.

5 Q Do you like to write?

6 A I do enjoy to write when I have time. But
 7 I don't keep a diary or a journal, no.

8 Q All right. That's all for that one.

9 (Defendant's Exhibit Number 10
 10 was marked for identification.)

11 BY MR. BURGOYNE:

12 Q Would you identify Defendant's Exhibit 10
 13 for us, Stephen?

14 A This is my secondary application.

15 Q To Howard College of Medicine?

16 A Yes.

17 Q And secondary, that means secondary to the
 18 AMCAS application we were just looking at?

19 A Right.

20 Q I won't ask you if that's your picture up
 21 there.

(Pages 117 to 120)

Page 117

1 Q Okay. And he said that he found your
 2 questions and answers to be both intelligent and
 3 well organized and that you demonstrated the ability
 4 to rapidly learn difficult concepts and integrate
 5 them into a broader intellectual framework. Does
 6 that sound consistent with your understanding of
 7 your efforts in his class?

8 A Yeah. I had to get up at 4:30, 5:00
 9 o'clock in the morning to study. So I made sure I
 10 knew all the information before I went to class.
 11 And then I studied after class up until I had to go
 12 to work. So that was a very -- that was a very
 13 one-dimensional summer.

14 Q You ended up getting a B+ in the course?

15 A Uh-huh.

16 Q All right.

17 (Defendant's Exhibit Number 12
 18 was marked for identification.)

19 BY MR. BURGOYNE:

20 Q DX12 is the applicant interview form from
 21 Howard University, College of Medicine. It looks

1 performance on the MCAT in paragraph 21. The
 2 handwritten note says: "This candidate took the
 3 MCAT four times. He states the first three times he
 4 studied on his own for two to three months prior to
 5 the exam. The forth time he took Kaplan and
 6 used" --

7 A Flash card technique.

8 Q Flash card technique to study.

9 A Yeah.

10 Q Do you recall explaining your performance
 11 on the MCAT to Dr. Lewis in that fashion?

12 A Yes, I do. I did not bring up my reading
 13 or writing disability because he didn't ask. So I
 14 didn't want to disclose that.

15 Q Is this an accurate statement, that you
 16 think your having taken the Kaplan course
 17 contributed to your performance on the fourth time
 18 you took the MCAT?

19 A Yes.

20 Q Paragraph 28 on the next page states that
 21 you were continuing to learn Japanese. Why did you

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1 like it was completed by the interviewer, Dr. Karey
 2 M. Lewis.

3 A Uh-huh.

4 Q I'm not sure if this is -- it looks like
 5 they got your name wrong, too, up there?

6 A I'm used to it.

7 Q You are, apparently. But you recall
 8 interviewing with Dr. Lewis?

9 A Yes.

10 Q And it's clear to you this is relating to
 11 your interview with Dr. Lewis?

12 A Yes.

13 Q Okay. There is a statement in paragraph
 14 eight where you had identified weaknesses in study
 15 habits and the need to improve study habits. Do you
 16 recall discussing your study habits with Dr. Lewis?

17 A I don't recall exactly what I said about
 18 my study habits, but if it's there, I'm pretty sure
 19 I said it.

20 Q Okay. Look on the next page, if you
 21 would, Stephen. There is a discussion of your

Page 120

1 decide to take Japanese?

2 A That's kind of stupid. I'm a fan of
 3 Japanese cartoons, so I wanted to learn it and not
 4 have to read the subtitles, because the subtitles
 5 move so fast.

6 Q Is it a hard language?

7 A For me, by the time I took it, I had
 8 already taken Spanish, so it was not that hard, not
 9 as hard.

10 Q Right. Okay. Take a look a couple pages
 11 over. I can't read it at the top, but it says
 12 basically assuring or assuming professionalism in
 13 medical school applicants. Do you see that page?

14 A Uh-huh.

15 Q And is Dr. Lewis a man or a woman?

16 A Man.

17 Q It looks like Dr. Lewis rated you above
 18 average in the first category for interpersonal and
 19 communication skills, and characterized you as
 20 engaged, comfortable and articulate. Leadership
 21 skills, he said you were willing to take a

(Pages 121 to 124)

Page 121

Page 123

1 leadership role if encouraged. On respect for
 2 others he identified you as demonstrating the
 3 appropriate level of respect for the interview and
 4 others. And in tolerance and appreciation for
 5 cultural and gender differences, it indicated that
 6 you appear to have some experience in working with a
 7 wide range of people.

8 Would you agree that those are accurate
 9 descriptions of your personality?

10 A Yes. They are.

11 Q All right. The next page is a
 12 supplemental information page, which it looks like
 13 you completed for Howard University. Is this your
 14 handwriting?

15 A This is.

16 Q And again at page 2, the last sentence, it
 17 looks like you again refer to the possibility of
 18 opening an inner-city clinic for individuals who
 19 can't afford healthcare?

20 A Yeah.

21 Q On number four, where there is a question

1 scholarship every semester, when I was there, to
 2 students in the sciences who had a GPA above 3.0.
 3 So I was a biology major, I filled out a small
 4 application, sent it off, I got \$500 a semester.

5 Q Then number two; member of Phi Eta Sigma
 6 Honor Society. Is that the biology honor society?

7 A Yes.

8 Q And then you enrolled in the Honor Program
 9 at Central and you graduated magna cum laude? Is
 10 that all accurate?

11 A Yes.

12 Q Okay. Number 11, the question is: "How
 13 did you prepare for the MCAT? (If taken more than
 14 once, describe preparation for each MCAT):" And you
 15 responded: "The first three times that I took the
 16 MCAT I failed to prepare properly. First and
 17 foremost, I did not start studying until a month
 18 before each test. The fourth time I gave myself a
 19 year for preparation. I also focused more on how to
 20 take the MCAT." Were those accurate statements?

21 A Yes. They would be accurate. I took the

Page 122

Page 124

1 asking about volunteer experience, there is a
 2 reference to Habitat, which we discussed earlier?

3 A Right.

4 Q And then there is a reference to the
 5 Concord House. When did you do that?

6 A Right. So I did the Concord House, I
 7 believe it was my senior year in high school. And we
 8 it was basically a house for -- it was a daycare
 9 center for kids whose mothers were, you know,
 10 battered or run-away moms in New York City. And we
 11 did that for -- did that for a week, along with the
 12 soup kitchen. We would go to the soup kitchen.
 13 Yeah.

14 Q Is this a program that was coordinated
 15 through Ravenscroft?

16 A Yeah.

17 Q Okay. The next page there is question
 18 nine asks you about honors, achievements, and
 19 extracurricular activities, and there is a reference
 20 to Glaxo scholar. What is that?

21 A Glaxo basically had a, gives a \$500

1 course first, and after I took the course I started
 2 studying for it.

3 Q And by the course, you mean the Kaplan?

4 A By the course I mean the Princeton Review.

5 Q Let's make sure we got that. You were
 6 referencing the Princeton Review course. You took
 7 that before the first time you took it?

8 A Yes.

9 Q And then you took the Kaplan as part of
 10 the last time that you took the exam?

11 A Yes.

12 Q Okay.

13 (Defendant's Exhibit Number 13
 14 was marked for identification.)

15 BY MR. BURGOYNE:

16 Q DX13 is the Howard University form for
 17 identifying a disability; is that correct?

18 A Yes.

19 Q And the disability that you identified
 20 here was a learning disability?

21 A Yeah.

(Pages 133 to 136)

Page 133

Page 135

1 about here, there is a sentence that says, "I
 2 received a second evaluation from Dr. Filipowski."

3 A Uh-huh.

4 Q "And was told that my reading disability
 5 had gotten worse."

6 A Right.

7 Q "Now it takes me longer than before to run
 8 through the information in my head and to get the
 9 appropriate answer."

10 A Uh-huh.

11 Q Is it your understanding or your belief
 12 that your learning disability has gotten worse?

13 A Based on what Dr. Filipowski told me, was
 14 that my reading disability is not only based on the
 15 speed that I read, but my comprehension. Because
 16 when information that's thrown at me becomes more
 17 complex, it takes me longer for my brain to process
 18 it. So it's not necessarily that it's gotten worse,
 19 but it's that my -- the information that I'm
 20 learning or the information that I'm being asked is
 21 more complex --

Page 134

Page 136

1 Q Okay.

2 A -- than it was before.

3 Q Academics are harder now in medical
 4 school? The subject matter that you are studying
 5 now is harder than it was in college?

6 A The subject matter is more complex than it
 7 was in college, getting more and more complex, so it
 8 takes me longer to process the information, which
 9 makes my reading, which makes me slow down my
 10 reading speed.

11 Q Okay.

12 MR. BURGOYNE: Stephen, that's all I have.

13 THE WITNESS: Okay.

14 BY MR. BURGOYNE:

15 Q Actually, let me ask you one more question
 16 here. You didn't reference your writing disorder in
 17 this letter to NBME?

18 A Right. I didn't reference my writing
 19 disorder, well, one, because it was in my
 20 documentation. But more importantly, because you
 21 don't write anything on the USMLE. All you do is

1 read and punch in A, B, C or D.

2 Q Okay. So you believe it's the reading
 3 disorder that is what necessitates your getting
 4 extra testing time for the USMLE Step 1?

5 A In this case, yes, because there is no
 6 writing.

7 Q Okay.

8 MR. BURGOYNE: All right. That's all I
 9 have.

10 MR. STEEDMAN: He will read and sign.
 11 (Whereupon, at 12:00 p.m., the
 12 deposition of STEPHEN H. COCKBURN
 13 was concluded.)

14 * * * * *

15

16

17

18

19

20

21

1 CERTIFICATE FOR READING AND SIGNING

2
 3 I hereby certify that I have read and
 4 examined the within transcript and the same is a
 5 true and accurate record of the testimony given by
 6 me.

7
 8 Any additions or corrections that I
 9 feel are necessary I have listed on the separate
 10 ERRATA SHEET enclosed, indicating the page and
 11 line number of each correction.

12

13

14

15

16 NAME: _____

17 DATE: _____

18

19

20

21

EXHIBIT 8

COCKBURN VS. NATIONAL BOARD OF MEDICAL EXAMINERS, ET AL.

DEPOSITION OF VINCENT P. CULOTTA, PH.D.

DECEMBER 14, 2010

ART MILLER & ASSOCIATES
PHONE 410-494-8300
FAX 410-385-1883
www.artmiller.com

(Pages 1 to 4)

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Page 3

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA
STEPHEN HARRISON COCKBURN, *

Plaintiff, *

vs. * Civil Action

NATIONAL BOARD OF MEDICAL * No. 10-1407
EXAMINERS, et al., *

Defendants. *

* * * * *

Deposition of VICENT P. CULOTTA, Ph.D., a witness herein, called for examination by counsel for Defendants in the above-entitled matter, pursuant to notice, the witness being duly sworn by Robert M. Jakupciak, a Notary Public in and for the State of Maryland, taken at the offices of Callegary & Steedman, P.A., 201 N. Charles Street, Baltimore, Maryland, 21201, at 2:30 p.m., on December 14, 2010, and the proceedings being taken down by Stenotype by Robert M. Jakupciak, RPR.

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Page 4

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1 C O N T E N T S

2 THE WITNESS: VICENT P. CULOTTA, Ph.D.

3 EXAMINATION PAGE NO.

4 By Mr. Burgoyne5

5

6

7

8 E X H I B I T S

9 DEFENDANT'S EXHIBIT NUMBER PAGE NO.

10 17 Culotta CV19

11 18 Article entitled Testing, Testing, ..20
12 Testing

13 19 Article entitled30

14 Neuropsychological Assessment and
15 Advances in Neuroscience

16 20 Article entitled35

17 Psychological/Neuropsychological
18 Testing

19

20

21

1 E X H I B I T S (Cont'd.)

2 DEFENDANT'S EXHIBIT NUMBER PAGE NO.

3 21 Article entitled After the Demise ...38

4 of the Discrepancy: Proposed
5 Learning Disabilities Diagnostic
6 Criteria7 22 Records from NeuroBehavioral110
8 Associates

9 23 Patient Registration138

10 24 Letter dated 12/9/09143

11 25 Handwritten notes147

12 26 Assessment Results150

13 27 Answer sheet for Nelson-Denny159

14 28 Report by Dr. Filipowski162

15 29 Psychological Evaluation by Dr.164
16 Filipowski - 200517 30 Psychological Evaluation Addendum ..168
18 by Dr. Filipowski

19 31 Report by Dr. Zecker173

20 32 Report by Dr. Sparks173

21

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1 P R O C E E D I N G S

2 Whereupon,

3 VICENT P. CULOTTA, PH.D.,
4 called for examination by counsel for Defendants and
5 having been duly sworn by the Notary Public, was
6 examined and testified as follows:7 EXAMINATION BY COUNSEL FOR DEFENDANTS
8 BY MR. BURGOYNE:9 Q Dr. Culotta, could you state your full
10 name and work address for the record, please?11 A Yes. Vincent Phillip Culotta. 5565
12 Sterrett Place, Suite 320, Columbia, Maryland,
13 21044.

14 Q Are you an owner of that practice?

15 A Yes.

16 Q One of the owners?

17 A Uh-huh.

18 Q What is the name of your practice?

19 A NeuroBehavioral Associates.

20 Q Have you been deposed before?

21 A Yes.

1 involving any type of academic accommodations?
2 A It's probably been an issue in some cases
3 related to cognitive functions following a head
4 injury, but, no, not specifically for
5 accommodations.6 Q Looking at your CV, it appeared that you
7 have a fairly extensive background in, was it
8 concussive type impairments or where there has
9 actually been an injury to the brain? Is that
10 accurate?11 A That's been an area of interest of mine,
12 yes.

13 Q Okay. Are you on any medications today?

14 A No.

15 Q Any other reason why your answers might
16 not be accurate and complete today?

17 A No.

18 Q Have you testified before in court?

19 A Yes.

20 Q How many times?

21 A Probably 15 times, maybe 20 times.

Page 6

Page 8

1 Q How many times?

2 A Maybe 25 or 30 times.

3 Q Are you able to practice any medicine?

4 All those depositions. Have you been deposed before
5 in any cases involving accommodations on
6 standardized tests?

7 A No.

8 Q Having been deposed that many times, you
9 are fully familiar with the drill here. If you want
10 to take a break at any time, let me know.

11 A Thank you.

12 Q Likewise, if you have any questions at any
13 point about the manner in which I've phrased
14 something or something is unclear, will you make a
15 point of stopping me to make sure we get it
16 clarified?

17 A Yes, I will.

18 Q Have you been deposed in any cases
19 involving accommodations in the college setting?

20 A No.

21 Q Have you been deposed in any cases

1 Q Can you give me examples of the types of
2 cases in which you've testified?3 A Cases involving personal injury, cases
4 involving medical malpractice allegations, cases
5 involving a disability.6 Q And do you tend to be on the plaintiff's
7 side or the defense side or both?

8 A Both. Probably heavier towards plaintiff.

9 Q And are you testifying -- you've testified
10 in those cases as an expert witness?

11 A Yes.

12 Q Has any Court ever refused to accept your
13 testimony?

14 A No.

15 Q Have you ever personally been a party in
16 any lawsuits?

17 A No.

18 Q Have you ever been a witness in any cases
19 in Federal Court in the Eastern District of
20 Pennsylvania?

21 A No.

(Pages 25 to 28)

Page 25

Page 27

1 term "helpful" is there really isn't an agreed upon
 2 diagnostic segment of test for AD/HD.

3 Q Okay. Looking at Psychoeducational
 4 Testing, and you'll see in the second paragraph
 5 under this heading in the middle of the page, could
 6 you read that paragraph for us?

7 A "Psychoeducational testing is administered
 8 by a clinical or a school" --

9 Q Actually, the second paragraph.

10 A "Psychoeducational testing is often driven
 11 by what is referred to as a 'discrepancy model,'
 12 which compares the level of intellectual abilities
 13 to the level of achievement to determine whether or
 14 not the child is learning at a rate consistent with
 15 his or her capabilities. While discrepancy scores
 16 have historically been used in determining
 17 eligibility for special educational services, more
 18 recent studies have suggested that the discrepancy
 19 models are not reliable for detecting learning
 20 disorders."

21 Q Have you performed any research relating

1 A Yes. We found that the youngsters in our
 2 study that had clinically and statistically
 3 significant splits between their verbal and
 4 performance IQ scores showed a very high frequency
 5 of executive function disorders or AD/HD and a
 6 slightly lower frequency of non-verbal learning
 7 disorders. And I think the notion out there was
 8 that a low performance IQ was a good marker for a
 9 non-verbal learning disorder. In our experience we
 10 felt a lot of those children really looked much more
 11 dis-executive than non-verbal learning, and that's
 12 what the data bore out for us.

13 Q Where did you come out on the question
 14 whether or not the discrepancy model was a reliable
 15 model, or did you get into that?

16 A We discussed it in the study. And,
 17 basically, I believe in the introduction saying that
 18 that's -- that model is an actuarial model that's
 19 been used to define learning disabilities for some
 20 time. And as imaging studies have become more
 21 sophisticated and we have been able to tie learning

Page 26

Page 28

1 to the reliability of discrepancy models?

2 A Yes.

3 Q What research is that? If you need to
 4 refer me back to your CV --

5 A We've published an abstract examining the
 6 relationship between verbal and performance IQ
 7 scores and non-verbal learning disorders versus
 8 executive functions. I believe that was maybe in
 9 2004 or 2005. I can look back at the CV and see if
 10 I can find that for you.

11 Q Okay.

12 A Published in the Archives of Clinical
 13 neuropsychology in 2001. It was a long time ago.

14 Q Is that called Beware of the Verbal
 15 Performance IQ Split?

16 A Yes.

17 MR. STEEDMAN: Which number is that?

18 THE WITNESS: Number 14.

19 BY MR. BURGOYNE:

20 Q Okay. Do you recall the conclusions you
 21 reached in that study?

1 disorders to neural networks and the behavior of the
 2 brain, that model is not as helpful and it's not
 3 always as reliable.

4 Q So would you agree that discrepancy models
 5 are not reliable for detecting learning disorders?

6 A I wouldn't say they are not reliable, I
 7 would just say they should not be relied upon solely
 8 in the determination.

9 Q What else would you rely upon in addition
 10 to a discrepancy model?

11 A Rely on developmental histories,
 12 functional histories, academic observations,
 13 measures of psychometric intellectual and
 14 neurocognitive functioning, genetics, family
 15 history.

16 Q Haven't all those things always been part
 17 of the assessment someone in your position would
 18 perform even if you have also looked at the
 19 discrepancy analysis?

20 A They have been part of the assessment, but
 21 I don't know that we've always understood how much

(Pages 37 to 40)

Page 37

Page 39

1 administration?

2 A Yes.

3 Q What are some of those factors?

4 A Those factors could be transient illness,
5 fatigue, psychological disorder.6 Q I take it part of your job is to try to
7 sort through all that?

8 A Yes.

9 Q And reading results? On the second page
10 of this document, bottom right, it says: "In order
11 to conduct assessments on a break-even or profitable
12 basis, one must establish efficiency and volume."
13 Who is the target audience for this document?14 A This was written in the Maryland
15 Psychologist specifically for other psychological
16 professionals or psychologists.17 Q Okay. And what point were you making here
18 about volume being important in conducting
19 assessments?20 A I think if you want to get good at
21 something you have got to do a lot of it, so the1 Q Okay. Take a look at DX21, if you would,
2 please.3 A I have got 22 in front of me. Is that
4 correct?

5 Q It's probably me. I do a poor job.

6 MR. STEEDMAN: I have it as 21.

7 A 21. I have it.

8 Q All right. 21 is an article captioned
9 After the Demise of the Discrepancy: Proposed
10 Learning Disabilities Diagnostic Criteria, from a
11 publication titled Professional Psychology:
12 Research and Practice. Is this a publication you
13 are familiar with?

14 A Yes.

15 Q Do you recognize this article?

16 A Not this article. I know that Cecil
17 Reynolds has written about this before. I'm
18 familiar with the topic.19 Q Do you recognize either of the other
20 authors?

21 A Kamphaus, yes. Dombrowski, no.

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Page 40

1 more you do, the better you get. And if testing is
2 simple one of those things you do once in a while in
3 your practice, it's hard to reach a degree of
4 proficiency with it.5 Q All right. One more before we shift gears
6 on general background on some tests.7 (Defendant's Exhibit Number 21
8 was marked for identification.)

9 BY MR. BURGOYNE:

10 Q Are any of your publications
11 peer-reviewed?

12 A Yes.

13 Q Which ones on there are peer-reviewed?

14 A Okay. Number 2, number 3, number 4,
15 number 5, number 6, number 7, number 9, and --16 Q It tends to be the publications as opposed
17 to the --18 A Yeah. Most of the publications are
19 peer-reviewed. These couple that you have indicated
20 were where I have been requested to write a piece
21 about something or --1 Q Okay. Page 366 of this article, these two
2 sentences appear in the lower left. "Unfortunately,
3 the discrepancy model represents an assessment
4 heuristic that appears to lack validity and
5 reliability. Research indicates that it cannot
6 distinguish those who have LD from those who do not
7 in actual diagnostic practice."8 Do you degree or disagree with those
9 statements?10 A I'm a little pressed to agree or disagree
11 with a single statement in an article because I
12 don't really know the context under which those
13 statements are written or the background that leads
14 up to them. So I guess with that caveat in mind, I
15 don't even know that I want to answer that, frankly.
16 I just feel like that's too tough to pick a sentence
17 out of the middle of an article and ask me to agree
18 or disagree with it. Can you frame the question
19 differently?20 Q I'll try. In your own practice, based on
21 your own practice, would you agree that the

(Pages 41 to 44)

Page 41

Page 43

1 discrepancy model often can not distinguish between
 2 those who have LD from those who do not in terms of
 3 your actual diagnostic practice?

4 A I would go back to the statement I made
 5 probably 20 minutes ago, that I think the
 6 discrepancy model has limitations in its ability to
 7 discriminate and that additional information is
 8 necessary to make a valid diagnosis.

9 Q Would you agree that the discrepancy model
 10 lacks diagnostic validity?

11 A Again, I probably would not make a blanket
 12 statement like that. I simply think it is less
 13 useful as a sole diagnostic tool in determining the
 14 presence or absence of a learning disability.

15 Q Okay. Are there professional criteria for
 16 the diagnosis of learning disabilities and attention
 17 deficit disorders?

18 A There are criteria.

19 Q What are they called?

20 A The DSM-IV offers a set of criteria. The
 21 International Dyslexia Association offers a set of

1 the consensus guideline for the diagnosis of
 2 learning disabilities and AD/HD?

3 A No. I wouldn't describe it as the
 4 consensus guidelines. I think they are very
 5 important guidelines. There are other organizations
 6 that have guidelines as well.

7 Q What would you look to in your practice in
 8 terms of applying a set of guidelines?

9 A I would probably rely most on the DSM,
 10 though I find it less effective, particularly in the
 11 areas of learning disability.

12 Q Why do you find it less effective there?

13 A I feel the criteria are a bit too general,
 14 and may at times over or under-diagnose or fail to
 15 diagnosis a learning disability.

16 Q Let me make sure I understand. Is it your
 17 belief that they tend to over-diagnose or
 18 under-diagnose or both?

19 A It can be both.

20 Q In your view, is there a set of consensus
 21 guidelines for diagnosing learning disabilities?

Page 42

Page 44

1 criteria. I believe the World Health Organization
 2 offers a set of criteria.

3 Q What does the DSM standard for?

4 A Diagnostic and Statistical Manual of the
 5 American Psychiatric Association, Volume 4, TR.

6 Q What does TR standard for?

7 A Research. The evolution of the document
 8 from four to five, which is the research edition.

9 Q It's the transitional document?

10 A Yes.

11 Q Who established the criteria reflected in
 12 DSM-IV?

13 A The DSM criteria are established by
 14 behavioral research and agreed upon by a committee
 15 of professionals and used to communicate presence or
 16 absence of a certain symptom set.

17 Q Are they published under the supervision
 18 of a given organization?

19 A Under the American Psychiatric
 20 Association.

21 Q And are the DSM-IV criteria regarded as

1 A I wouldn't -- no, I don't believe there is
 2 a definitive set of guidelines.

3 Q In your view, is there a consensus set of
 4 guidelines for diagnosing AD/HD?

5 A Again, I think the DSM is most relied
 6 upon, but I wouldn't describe it as the only
 7 guidelines for making that diagnosis.

8 Q What is the diagnostic code from DSM for a
 9 reading disorder?

10 A 315.00.

11 Q And is a reading disorder a type of a
 12 learning disability?

13 A Yes.

14 Q Is that the same thing as dyslexia?

15 A No. Not necessarily.

16 Q How do the two differ, the reading
 17 disorder and dyslexia?

18 A Dyslexia is a neurologic term. A learning
 19 disability is a broader term, a reading disability
 20 is a broader term that comes from the DSM. You
 21 can -- I think that's how I would answer.

(Pages 53 to 56)

Page 53

Page 55

1 Q And performance is sometimes referred to
2 as achievement?

3 A Yes.

4 Q So in the discrepancy model you are
5 looking to the difference in an individual's
6 performance results in those two domains?

7 A Yes.

8 Q And do you need to find a significant
9 discrepancy in order to make the diagnosis?

10 A I don't.

11 Q How big a discrepancy do you need to find
12 in order to make the diagnosis?

13 A It may not be relevant. It depends on the
14 case. In a student who has had seven years of
15 research-based instruction following a diagnosis
16 of dyslexia, we may see no discrepancy at all, but
17 the biological basis of the disorder is still in the
18 brain. The heritable nature for his or her
19 children is still in the family.

20 Q Is the concept of a significant
21 discrepancy one which is used in discussing the

1 Q And, again, having an uneven profile
2 doesn't necessarily mean you have a learning
3 disability?

4 A Yes.

5 Q To what extent do you rely on self-report
6 in diagnosing AD/HD?

7 A I think it's one modality of data that's
8 important. I would describe it as important, no
9 more or no less than psychometric, historical or
10 developmental.

11 Q What are the risks of self-report?

12 A People can lie or forget.

13 Q Just mis-remember?

14 A Mis-remember.

15 Q Charitably viewed?

16 A Charitably, right.

17 Q Do you also encounter symptom
18 exaggeration?

19 A Sure.

20 Q And have there also been research studies
21 done where I guess it's malingering? Is that the

Page 54

Page 56

1 discrepancy model?

2 A It is, yes.

3 Q And is there a definition of what is
4 significant for that purpose, accepted within the
5 profession?

6 A I think there are conventions. I think
7 the convention is a standard deviation or two
8 standard deviations discrepancy between IQ versus
9 achievement.

10 Q Do you often see in your patients relative
11 strengths and relative weaknesses in their
12 performance on psychoeducational testing?

13 A Yes.

14 Q And simply having relative strengths and
15 weaknesses is not in itself sufficient to diagnose a
16 learning disability?

17 A Correct.

18 Q And when you see people referring to
9 someone having an uneven profile, is that the same
20 concept?

21 A Yes.

1 term?

2 A Yes.

3 Q What does that mean; malingering?

4 A Willful production of false symptoms in
5 order to achieve some secondary gain that's not
6 simply psychological in nature.

7 Q What are examples of the secondary
8 benefits one can obtain from malingering or symptom
9 exaggeration?

10 A Money, getting out of work or
11 responsibility.

12 Q Money as in disability benefits?

13 A Could be, sure.

14 Q Getting out of work because of a diagnosed
15 impairment?

16 A Yes.

17 Q How about obtaining medications, Ritalin
18 or other medications?

19 A Sure.

20 Q Is that something that you encounter in
21 your practice?

EXHIBIT 9

315.1 Mathematics Disorder

Differential Diagnosis

See the "Differential Diagnosis" section for Learning Disorders (p. 51).

Diagnostic criteria for 315.00 Reading Disorder

- A. Reading achievement, as measured by individually administered standardized tests of reading accuracy or comprehension, is substantially below that expected given the person's chronological age, measured intelligence, and age-appropriate education.
- B. The disturbance in Criterion A significantly interferes with academic achievement or activities of daily living that require reading skills.
- C. If a sensory deficit is present, the reading difficulties are in excess of those usually associated with it.

Coding note: If a general medical (e.g., neurological) condition or sensory deficit is present, code the condition on Axis III.

315.1 Mathematics Disorder

Diagnostic Features

The essential feature of Mathematics Disorder is mathematical ability (as measured by individually administered standardized tests of mathematical calculation or reasoning) that falls substantially below that expected for the individual's chronological age, measured intelligence, and age-appropriate education (Criterion A). The disturbance in mathematics significantly interferes with academic achievement or with activities of daily living that require mathematical skills (Criterion B). If a sensory deficit is present, the difficulties in mathematical ability are in excess of those usually associated with it (Criterion C). If a neurological or other general medical condition or sensory deficit is present, it should be coded on Axis III. A number of different skills may be impaired in Mathematics Disorder, including "linguistic" skills (e.g., understanding or naming mathematical terms, operations, or concepts, and decoding written problems into mathematical symbols), "perceptual" skills (e.g., recognizing or reading numerical symbols or arithmetic signs, and clustering objects into groups), "attention" skills (e.g., copying numbers or figures correctly, remembering to add in "carried" numbers, and observing operational signs), and "mathematical" skills (e.g., following sequences of mathematical steps, counting objects, and learning multiplication tables).

Associated Features and Disorders

See the "Associated Features and Disorders" section for Learning Disorders (p. 50). Mathematics Disorder is commonly found in combination with Reading Disorder or Disorder of Written Expression.

EXHIBIT 10

Diagnostic criteria for Attention-Deficit/Hyperactivity Disorder

A. Either (1) or (2):

(1) six (or more) of the following symptoms of **inattention** have persisted for at least 6 months to a degree that is maladaptive and inconsistent with developmental level:

Inattention

- (a) often fails to give close attention to details or makes careless mistakes in schoolwork, work, or other activities
- (b) often has difficulty sustaining attention in tasks or play activities
- (c) often does not seem to listen when spoken to directly
- (d) often does not follow through on instructions and fails to finish schoolwork, chores, or duties in the workplace (not due to oppositional behavior or failure to understand instructions)
- (e) often has difficulty organizing tasks and activities
- (f) often avoids, dislikes, or is reluctant to engage in tasks that require sustained mental effort (such as schoolwork or homework)
- (g) often loses things necessary for tasks or activities (e.g., toys, school assignments, pencils, books, or tools)
- (h) is often easily distracted by extraneous stimuli
- (i) is often forgetful in daily activities

(2) six (or more) of the following symptoms of **hyperactivity-impulsivity** have persisted for at least 6 months to a degree that is maladaptive and inconsistent with developmental level:

Hyperactivity

- (a) often fidgets with hands or feet or squirms in seat
- (b) often leaves seat in classroom or in other situations in which remaining seated is expected
- (c) often runs about or climbs excessively in situations in which it is inappropriate (in adolescents or adults, may be limited to subjective feelings of restlessness)
- (d) often has difficulty playing or engaging in leisure activities quietly
- (e) is often "on the go" or often acts as if "driven by a motor"
- (f) often talks excessively

Impulsivity

- (g) often blurts out answers before questions have been completed
- (h) often has difficulty awaiting turn
- (i) often interrupts or intrudes on others (e.g., butts into conversations or games)

B. Some hyperactive-impulsive or inattentive symptoms that caused impairment were present before age 7 years.

C. Some impairment from the symptoms is present in two or more settings (e.g., at school [or work] and at home).

**314.9 Attention-Deficit/Hyperactivity Disorder
Not Otherwise Specified**

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**Diagnostic criteria for
Attention-Deficit/Hyperactivity Disorder (continued)**

- D. There must be clear evidence of clinically significant impairment in social, academic, or occupational functioning.
- E. The symptoms do not occur exclusively during the course of a Pervasive Developmental Disorder, Schizophrenia, or other Psychotic Disorder and are not better accounted for by another mental disorder (e.g., Mood Disorder, Anxiety Disorder, Dissociative Disorder, or a Personality Disorder).

Code based on type:

314.01 Attention-Deficit/Hyperactivity Disorder, Combined Type:
if both Criteria A1 and A2 are met for the past 6 months

314.00 Attention-Deficit/Hyperactivity Disorder, Predominantly Inattentive Type: if Criterion A1 is met but Criterion A2 is not met for the past 6 months

314.01 Attention-Deficit/Hyperactivity Disorder, Predominantly Hyperactive-Impulsive Type: if Criterion A2 is met but Criterion A1 is not met for the past 6 months

Coding note: For individuals (especially adolescents and adults) who currently have symptoms that no longer meet full criteria, "In Partial Remission" should be specified.

**314.9 Attention-Deficit/Hyperactivity Disorder
Not Otherwise Specified**

This category is for disorders with prominent symptoms of inattention or hyperactivity-impulsivity that do not meet criteria for Attention-Deficit/Hyperactivity Disorder. Examples include

1. Individuals whose symptoms and impairment meet the criteria for Attention-Deficit/Hyperactivity Disorder, Predominantly Inattentive Type but whose age at onset is 7 years or after
2. Individuals with clinically significant impairment who present with inattention and whose symptom pattern does not meet the full criteria for the disorder but have a behavioral pattern marked by sluggishness, daydreaming, and hypoactivity

Conduct Disorder

Diagnostic Features

The essential feature of Conduct Disorder is a repetitive and persistent pattern of behavior in which the basic rights of others or major age-appropriate societal norms or rules are violated (Criterion A). These behaviors fall into four main groupings:

EXHIBIT 11

Testing, Testing, Testing!

—Vincent P. Culotta, Ph.D., and Sarah Weden, Psy.D., NeuroBehavioral Associates

When considering the possibility of an attention disorder, learning disability, or other behavioral health problem, people are often referred for testing of one type or another. Testing typically means the administration of measures to help further the diagnostic process, direct treatment, or measure response to an intervention.

The most common types of testing conducted by a psychologist include psychological, psychoeducational, and neuropsychological assessment, each with various strengths, limitations, and roles in assessing attention-deficit/hyperactivity disorder (AD/HD) and other behavioral health conditions. Many of these procedures are appropriate for adults as well as children, and can answer many questions about different types of skills that are important for social, educational and vocational functioning.

Psychological Testing

Psychological testing, administered by a doctoral trained psychologist, involves intelligence testing and measures that assess social, emotional, and behavioral functioning. While it may or may not include academic or achievement testing, psychological testing is general in scope compared to psychoeducational and neuropsychological testing.

Because the testing is based upon a "bio-psycho-social" model, the psychologist conducting it will review biological, psychological, and social factors that may contribute to an individual's symptoms or problems. Relevant biological factors include a family history of mood disorder, attention disorder, or learning disability, which are heritable. Psychological issues may include coping mechanisms, personality style, frustration tolerance, flexibility, and insight.

An individual's functioning may be influenced by certain social factors, such as the quality of family relationships or financial strain, or by more general stressors like terrorism or war. The psychologist who conducts the testing will use information from the patient's self-report, in the case of an adolescent or adult, or parent reports for a child, as well as the data from the formal tests themselves, to determine strengths and weaknesses.

Psychological testing may or may not be helpful in the diagnosis of AD/HD, depending upon the actual tests used. The most helpful psychological testing in addressing AD/HD are measures of executive functioning, behavioral checklists and a continuous performance test. Psychological testing may also be helpful in determining other problems that result from difficulties with attention and self-control. Psychological testing may require two to four hours and will likely cost approximately \$500-1000.

Psychoeducational Testing

Psychoeducational testing is administered by a clinical or school psychologist and focuses on the relationship between intelligence and educational achievement, and may not include a review of social or emotional functioning. In school systems, this kind of assessment is used to determine whether or not a child qualifies for special education programs or services.

Psychoeducational testing is often driven by what is referred to as a "discrepancy model," which compares the level of intellectual ability to the level of achievement to determine whether or not the child is learning at a rate consistent with his/her capabilities. While discrepancy scores have historically been used in determining eligibility for special educational services, more recent studies have suggested that discrepancy models are not reliable for detecting learning disorders.

Psychoeducational testing often does not address cognitive issues specific to AD/HD and will not provide adequate information to determine emotional, behavioral, or social problems that may be impeding a child's or adult's academic performance—for example, impulsivity or anxiety.

Psychoeducational testing may require two to four hours and costs approximately \$500 to \$1000.

Neuropsychological Testing

Neuropsychological assessments are provided by a neuropsychologist. Most neuropsychologists are doctoral-level clinical psychologists with additional training and supervision in the neurosciences.

Neuropsychological testing helps to identify brain-behavior relationships and are useful

in diagnosing suspected brain dysfunction and neurologically-based behavioral disorders. Based upon a "neurobehavioral" model, a neuropsychological assessment includes a comprehensive evaluation of intellect, achievement, executive functioning, attention, learning and memory, language skills, visual-spatial skills, motor-coordination, and behavioral/emotional/social functioning. Elements of a neurobehavioral model include genetics, brain development and function, behavior, and the environment.

The neuropsychological assessment is particularly helpful with multiple problems or co-occurring symptoms. For example, a child or an adult with attentional difficulties may also have mood instability, learning and social difficulties. Neuropsychological testing aids in reaching a differential diagnosis and identifying the course, prognosis, and appropriate treatment of known neurobehavioral disorders. The limited number of neuropsychologists may make access to neuropsychological testing difficult. Neuropsychological testing may require four to eight hours and costs approximately \$1000 to \$2000.

Information obtained from testing may be useful to your physician in determining appropriate medication. Testing may help in obtaining school services, rehabilitation services, or counseling services. Test results may identify strengths and weaknesses relevant to occupational and vocational goals.

Helpful Hints

Here are some suggestions that will help you get the most from testing:

- Make sure you know what questions you want the testing to answer. Ask the professional who has referred you, as well as the psychologist doing the testing, what type of information you should expect to receive and how it will help in making a diagnosis and arriving at decisions about intervention.
- Expect a written report you can understand. If you are unsure about how to interpret the results of the testing, or how to implement the recommendations, be sure to ask the psychologist to arrange a separate appointment after the evaluation has been

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completed so that you can ask questions and receive additional information.

- Make sure the results are valid and reliable—that they truly have measured the behavior that was being tested. For example, if you or your child forgets to take the medication that you usually use to improve attention, the results of the testing may not describe how you work or learn under more typical learning conditions, and the test results would not be viewed as valid. "Reliable" means that if you had the same test administered at another time or by an equally well qualified tester, approximately the same results would be obtained. Obviously, if the test results are valid, they also are reliable, but the reverse is not always true.
- Ask your psychologist if medications for attention should be taken prior to testing because, as discussed above, making the wrong assumption could compromise the validity of the testing.
- If a child is to be tested, make sure that the practitioner has training and experience with children.

• Investigate your insurance company and the terms of your own insurance policy to determine if testing services are covered.

Ask whether the psychologist is able to bill your insurance directly, or whether you will be provided with instructions for completing the claim yourself.

• Expect confidentiality and control over your written report. If you need to share the results of your evaluation with others who are working with you or with your child, you will be given an opportunity to sign a form called a "Release of Information," where you will indicate who can receive a copy of the report or even a telephone call or e-mail. Because the exchange of information about a patient without his or her knowledge and consent is a very serious breach of professional ethics, providing written authorization for members of your professional team to confer with each other is very important.

• Do not expect to be given test protocols, the printed forms that the psychologist uses to record responses to the individual items on the test. Tests require extensive sampling

to develop norms; the tests, including the associated response forms, are copyright protected.

• Make sure your psychologist uses the most current test version. Tests typically are updated from time to time in order to conform to new information about the skills and abilities being tested. Different versions of the same test will be similar in many ways, but may not be directly comparable in every respect. When comparing more recent test results to previous testing, it is wise to determine whether the same versions of the test were used at each administration.

In the table below, you will find lists of tests that typically are used in psychological, psychoeducational or neuropsychological evaluations. All are considered "formal" tests, meaning that they are administered under specific conditions using specific materials, and that the items on these instruments have been tested on a large number of individuals. They are considered valid for the measurement of specific skills and abilities, as long as they are administered according to the specified criteria.

IQ Measures

Differential Ability Scales

Kaufman Brief Intelligence Test

Wechsler Adult Intelligence Scale, Third Ed.

Wechsler Intelligence Scale for Children, Third Ed.

Stanford-Binet Intelligence Scales, Fifth Ed.

Test of Nonverbal Intelligence, Third Ed.

Achievement Measures

Gates-MacGinitie Reading Tests

Gray Oral Reading Tests, Third Ed.

KeyMath Revised

Nelson-Denny Reading Test, Forms G and H

Wechsler Individual Achievement Test, Second Ed.

Wide Range Achievement Test, Third Ed.

Woodcock-Johnson Tests of Achievement, Third Ed.



Common Assessment Measures

Personality Measures

Beck Anxiety Inventory

Beck Depression Inventory-II

Child Behavior Checklists

Children's Depression Inventory

House-Tree-Person Test

Kinetic Family Drawing

Minnesota Multiphasic Personality Inventory, Adolescent

Minnesota Multiphasic Personality Inventory, II

Personality Assessment Inventory

Revised Children's Manifest Anxiety Scale

Roberts Apperception Test

Rorschach Inkblot Test

Sentence Completion Test

Thematic Apperception Test

Neurocognitive Measures

Boston Naming Test

California Verbal Learning Test, Children's version

California Verbal Learning Test, Second Ed.

Category Fluency Test

Clock Drawing Test

Controlled Oral Association Test

Developmental Test of Visual-Motor Integration

Halstead-Reitan Neurological Test Battery

Intermediate Visual Auditory Continuous Performance Test

Judgment of Line Orientation

Kaufman Assessment Battery for Children

NEPSY: A Development Neuropsychological Assessment

Rey Complex Figure Test

Stroop Color and Word Test of Variables of Attention

Wechsler Memory Scale, Third Ed.

Wide Range Assessment of Memory and Learning

Wisconsin Card Sorting Test

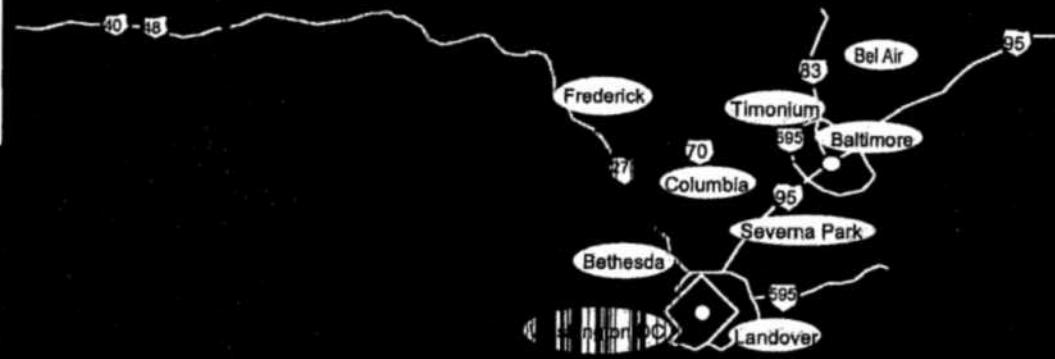
Dr. Culotta is a neuropsychologist in practice in Columbia, MD. He has made presentations to CHADD on topics related to the neurological bases of AD/HD. Dr. Weden is a recent graduate of Nova Southeastern University and currently practices with Dr. Culotta at NeuroBehavioral Associates in Columbia.

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